

REMARKS

Examiner Interview

Applicant thanks the Examiner for the courtesy of the telephone interview on May 8, 2009 in which the Examiner agreed to remove the finality of the current office action.

Finality of Current Office Action

Applicant respectfully submits that the finality of the current Office Action mailed February 18, 2009 is improper. "Under the present practice, second or any subsequent actions on the merit shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement ..." (MPEP Sec. 706.07(a)). Applicant respectfully submits that the Examiner made a new ground of rejection that was not necessitated by Applicant's most recent claim amendment. For example, Applicant did not amend independent claim 12 in Applicant's November 21, 2008 response and the Examiner introduced a new ground of rejection for claim 12 using Ismail.

In addition, the Examiner cited Ismail based on the Examiner's search and not due any information disclosure statement submitted by Applicant. Thus, because the new grounds of the rejection was neither necessitated by Applicant's amendment nor Applicant's information disclosure statement, the finality of the current Office Action is improper. Accordingly, Applicant respectfully requests that the Examiner remove the finality of the current Office Action.

Applicant is responding to the current Office Action in this response as if this Office Action was a non-final Office Action.

Amendments

Amendments to the Claims

Applicant has amended the claims to claim a content file that is a broadcasted program with different play sequences. Each play sequence represents a different story line. Furthermore, a selected play sequence and associated story line of the broadcasted program is modified based on user input. No new matter has been added because support for the amendments can be found, *intra alia*, in paragraphs 23 and 47-48 of Applicant's specification as originally filed.

Rejections

Rejections under 35 U.S.C. § 102

Claims 1-2, 4-5, 7-16, 18-19, 21-29, 31-32, and 34-38

Claims 1-2, 4-5, 7-16, 18-19, 21-29, 31-32, and 34-38 stand rejected under 35 U.S.C. § 103(a) as anticipated by Ismail et al., U.S. Patent Publication No. 2003/0009371. Applicant respectfully submits that Ismail does not teach or suggest each and every element of Applicant's invention as claimed in claims 1-2, 4-5, 7-16, 18-19, 21-29, 31-32, and 34-38.

Ismail discloses a television set-top-box that creates a viewer preference profile based on a viewer's viewing history. The set-top-box selects various video segments to create customized video programs for delivery to the viewer as a linear program. Furthermore, Ismail discloses that the user can customize their profile, specify an advertising preference or switch channels.

In independent claims 1, 12, and 28, Applicant claims modifying a selected play sequence and associated story line of a broadcasted program. The sections of Ismail cited by the Examiner as disclosing Applicant's modifying a play sequence discloses that a user can customize their profile, specify an advertising preference, or switch channels. However, none of these sections can properly interpreted as disclosing Application's claimed element. For example, one of skill in the art would not consider customizing a user profile or specifying an advertising preference as equivalent to modifying a selected play sequence and associated story line of a broadcasted program as claimed.

Furthermore, changing channels may stop the playing of a playlist, but changing channels itself does not modify the playlist or the associated story line. The playlist and associated story line would remain the same after the channel change. In addition, there is no other section of Ismail that teaches or suggests modifying a selected play sequence and associated story line of a broadcasted program as claimed. Thus, Ismail cannot properly be interpreted as teaching or suggesting Applicant's claimed element.

Therefore, Applicant respectfully submits that the invention claimed in claims 1, 12, and 28, and claims 2, 4-5, 7-11, 13-16, 18-19, 21-27, 29, 31-32, 34-38 that depend on them is not anticipated by Ismail under 35 U.S.C. § 102(e). Accordingly, Applicant respectfully requests the withdrawal of the rejection of the claims.

SUMMARY

Claims 1-2, 4-5, 7-16, 18-19, 21-29, 31-32, and 34-38 are currently pending. In view of the foregoing amendments and remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Eric Repleglo at (408) 720-8300 x7514.

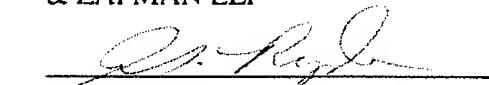
Deposit Account Authorization

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

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& ZAFMAN LLP

Dated: May 18, 2009


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